

Materials for March 30, 2005  
Sub 4 Hearing

## LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, \_\_\_\_\_.

General Subject: Court fees.

(1) Existing law sets forth various court fees and fines to be collected for services provided in conjunction with the operation of the courts, as specified. The court fees and fines collected pursuant to these provisions, that are not subject to a local revenue sharing agreement or practice, are required to be deposited in a special account in the county treasury, except as to costs incurred by, and services provided by, the superior court, which are transmitted monthly to the Controller for deposit in the Trial Court Trust Fund. Existing law further provides for the distribution of revenue from these fees and imposes administrative and reporting duties on the Administrative Director of the Courts in this regard.

Existing law required the Administrative Office of the Courts and the California State Association of Counties, on or before January 1, 2005, to jointly propose to the Legislature a long-term revenue allocation schedule, to take effect on

July 1, 2005, for specified fees and fines for contempt of court and the failure to appear in court or to pay a court-ordered fine.

This bill would, commencing July 1, 2005, preserve the distribution of revenue, with respect to all of the above-described fees, that is in effect pursuant to an agreement or practice that is in place as of that date; and would revise the duties of the Administrative Director of the Courts with regard to those fees. The bill would shift certain other administrative duties relating to revenue deposited in the Trial Court Trust Fund from the joint administration of the Administrative Office of the Courts and the California State Association of Counties to the sole administration of the Administrative Office of the Courts; and would make additional changes relating to the payment of this revenue by a county or city and county. The bill would impose a state-mandated local program by requiring new duties of county treasurers.

(2) Existing law specifies the installment amounts each county must remit to the state, by specified dates, for funding court operations.

This bill would establish a working group composed of representatives from the Administrative Office of the Courts and the California State Association of Counties to review court and county fiscal information to determine the level of cost changes incurred by the courts and counties with respect to expert evidence services and legal representation furnished in the course of various court proceedings, as compared to the practice in effect before the issuance of a specified opinion of the Attorney General; and, based on this review, to identify adjustments to be made to the county remittances described above that will increase or decrease the amount that each county is required to remit each year, beginning with the 2005-06 fiscal year.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(4) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

An act to amend Section 68085.5 of, and to add Section 77201.3 to, the Government Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 68085.5 of the Government Code is amended to read:

68085.5. (a) Notwithstanding any other provision of law, the fees and fines collected pursuant to Sections 116.390, 116.570, 116.760, 116.860, 491.150, 704.750, 708.160, 724.100, 1134, and 1161.2 of the Code of Civil Procedure, Sections 26824, 26828, 26829, 26834, and 72059 of the Government Code, and Section 1835 of the Probate Code, that are not part of a local revenue sharing agreement or practice shall be deposited in a special account in the county treasury and transmitted therefrom monthly to the Controller for deposit in the Trial Court Trust Fund.

(b) Notwithstanding any other provision of law, the fees and fines collected pursuant to Sections 26827.6, 26827.7, 26840.1, 26847, 26854, 26855.1, 26855.2, 26859, 27293, 71386, and 72061 of the Government Code, Section 103470 of the Health and Safety Code, Sections 1203.4 and 1203.45 of the Penal Code, Sections 2343, 7660, and 13201 of the Probate Code, and Section 14607.6 of the Vehicle Code, that are not subject to a local revenue sharing agreement or practice, shall be deposited in a special account in the county treasury.

(c) However, if a superior court incurs the cost or provides the services specified in subdivision (b), the fees and fines collected shall be transmitted from the special account in the county treasury monthly to the Controller for deposit in the Trial Court Trust Fund.

(d) (1) Until July 1, 2005, each superior court and each county shall maintain the distribution of revenue from the fees specified in subdivisions (a) and (b) that is in

effect pursuant to an agreement or practice that is in place at the time this section takes effect.

(2) On and after July 1, 2005, each superior court and each county shall maintain the distribution of revenue that is in effect pursuant to an agreement or practice that is in place as of July 1, 2005, from the fees and fines specified in subdivisions (a) and (b), and the fees and fines collected pursuant to Sections 177.5 and 1218 of the Code of Civil Procedure, and Sections 166 and 1214.1 of the Penal Code.

(e) In order to ensure that expenditures from revenue sharing agreements are consistent with Judicial Council fiscal and budgetary policy, the Administrative Director of the Courts shall review and approve all distribution of revenue agreements regarding the fees and fines collected pursuant to Sections 177.5 and 1218 of the Code of Civil Procedure, and Sections 166 and 1214.1 of the Penal Code, that are negotiated ~~after the effective date of this section~~ on or after July 1, 2005. If approval of an agreement negotiated on or after the effective date of this section July 1, 2005 is not granted, the director shall advise the court and county of the reasons for not granting approval and suggest modifications that will make the agreement consistent with the Judicial Council fiscal and budgetary policies.

~~(e)~~

(f) The Administrative Office of the Courts ~~and the California State Association of Counties shall jointly determine and administer on or after January 1, 2004, and on or after January 1, 2005,~~ shall administer all of the following:

(1) The amount of revenue that was deposited in the Trial Court Trust Fund pursuant to subdivisions (a) and (b) during the calendar year that just ended.

(2) The difference between the amount specified in subdivision (c) and thirty-one million dollars (\$31,000,000).

(3) ~~A county-by-county transfer of~~ Each county or city and county shall pay the amount specified in paragraph (2) to the Trial Court Trust Fund in two equal installments, on February 15 and May 15, in each fiscal year. Counties shall pay the installments from all available resources, including the county's general fund.

(4) All moneys required to be paid to the Trial Court Trust Fund pursuant to this section shall be considered delinquent if not received by the dates specified in this section, and shall be subject to the penalties set forth in Section 68085.

(5) Penalty amounts calculated pursuant to paragraph (4) shall be paid by the county or the city and county to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated.

~~(4)~~

(6) Any payment to correct for an overpayment or underpayment made for the 2003-04 any fiscal year, shall be paid to the appropriate party on or before September 15, 2004 November 15 of the subsequent fiscal year.

~~(5)~~

(7) The sum of the amounts specified in paragraphs (1) and (2) may not exceed thirty-one million dollars (\$31,000,000), and shall be deposited in the Trial Court Trust Fund.

~~(f)~~



(g) Each superior court and each county shall provide detailed quarterly reports of the revenues generated by the fees and fines specified in subdivisions (a) and (b), Sections 177.5 and 1218 of the Code of Civil Procedure, and Sections 166 and 1214.1 of the Penal Code. The reports shall include the total amount collected and retained by the court or county and the existing distribution of those fees.

~~(g) On or before January 1, 2005, the Administrative Office of the Courts and the California State Association of Counties shall jointly propose to the Legislature a long-term revenue allocation schedule, to take effect on July 1, 2005, for the fees and fines specified in subdivisions (a) and (b), Sections 177.5 and 1218 of the Code of Civil Procedure, and Sections 166 and 1214.1 of the Penal Code. The revenue allocation schedule shall include provision for any underpayment or overpayment made pursuant to this section.~~

~~(h) No other transfers of the fees and fines specified in subdivisions (a) and (b), Sections 177.5 and 1218 of the Code of Civil Procedure, and Sections 166 and 1214.1 of the Penal Code shall take effect prior to July 1, 2005.~~

~~(i)~~

(h) Nothing in this section shall be deemed to alter or make void the shift of responsibility for court funding from the counties to the state.

SEC. 2. Section 77201.3 is added to the Government Code, to read:

77201.3. To the extent that responsibility for the payment of the costs of evaluations specified in Sections 288.1, 1026, 1027, and 1368 of the Penal Code, and Sections 3051, 3103.5, 5300, and 6600 of the Welfare and Institutions Code, is transferred from counties to the courts, or from courts to the counties, as compared to

the practice in effect before the issuance of an opinion of the Attorney General related to these examinations (87 Ops. Cal. Atty. Gen. 62 (2004)), a working group composed of representatives from the Administrative Office of the Courts and the California State Association of Counties is established to review court and county fiscal information to determine the level of cost changes incurred by the courts and counties that have occurred related to these forensic examinations. Notwithstanding paragraph (3) of subdivision (b) of Section 77201.1, based upon this review, the working group shall identify adjustments to be made to county remittances specified in paragraphs (1) and (2) of subdivision (b) of Section 77201.1 that will increase or decrease the amount that each county is required to remit each year, beginning with the amounts due in the 2005-06 fiscal year. The working group shall report these adjustments to the State Controller by September 30, 2005.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for changes to implement the Budget Act of 2005, it is necessary that this act take effect immediately. .

## **Issue #15—Corporate Responsibility Unit Funding Authority**

Chapter 876, Statutes of 2003 is amended to read:

SEC. 16. The investigation and enforcement of the provisions contained in Sections 1 to 15, inclusive, of this act shall be accomplished without any duplication of effort on the part of the Attorney General and the Commissioner of Corporations. To the extent that the Attorney General exercises this authority, ~~it shall be done using existing resources, and no future~~ no General Fund budget augmentations shall be made for this purpose.

## **Issue #1—Legal Services Revolving Fund**

Section 1. Section 11044 of the Government Code is amended to read:

*11044. (a) The Legal Services Revolving Fund is hereby established in the State Treasury, to be administered by the Department of Justice. Moneys in the fund, upon appropriation by the Legislature, shall be used by the Attorney General for investigation and litigation activities for client agencies and for investigation and litigation activities funded through judgments or settlements.*

*(a) (b) For state agencies, departments, or programs which are charged for the costs of legal services rendered by the Attorney General, the Attorney General shall charge an amount sufficient to recover the costs incurred in providing the legal services. These funds shall be deposited into the Legal Services Revolving Fund. Except as approved by the Department of Finance, charges for legal services may not be made against the General Fund, but may be made against any other fund or special account in the General Fund.*

*(b) (c) Upon the request of the Attorney General in the form prescribed by the Controller, the Controller shall transfer the amount of the charges for services rendered from the agency's appropriation to the appropriation for the support of the Attorney General's office, provided that the Attorney General shall not request an amount which, when added to previous charges in the same fiscal year, exceeds the amount budgeted by the state agency for Attorney General legal services. Payment Reimbursements for these charges shall be credited to and in augmentation of the appropriation for the support of the Attorney General's office from which the cost of the services was or will be paid.*

*(c) (d) A state agency that has a dispute regarding charges for legal services provided by the Attorney General shall notify the Attorney General, in writing, of the dispute and the basis therefor. The Attorney General shall immediately provide a credit to the state agency in the subsequent billing or billings for the amount of the charges in dispute. No further transfer of funds shall occur with respect to the services for which charges are disputed until the dispute is resolved by the Attorney General, subject to the approval of the Department of Finance.*

Section 2. Section 16427 of the Government Code is amended to read:

*16427. The fund is under the control of the Department of Justice, hereafter referred to as "the department." The department shall maintain accounting records pertaining to the fund, including subsidiary records of individual litigation deposits and the disbursements thereof, and shall prepare and submit to the Department of Finance, the Chairperson of the Joint Legislative Budget Committee, and the chairpersons of the committee in each house that considers appropriations, quarterly reports concerning the activity of the fund which details the number of deposits received, disbursements to claimants, the receipt of interest income, and what amount, if any, was used for the litigation costs of the department. The department shall file a claim with the State Controller to pay out money in the fund to whomever and at such time as the department may direct; provided that if a sum of money in the fund was deposited pursuant to order or direction of the court, that sum shall be paid to whomever and at such time as the court may direct, notwithstanding Section 13340 of the Government Code. Funds transferred to the Legal Services Revolving Fund or reimbursements may be expended by the department only upon approval from the Department of Finance, as requested in writing by the Department of Justice. Such expenditures are deemed appropriate if the Department of*

~~Finance does not approve or disapprove within 30 days. The Attorney General shall notify the Department of Finance no later than 15 days after any transfer from the fund. Any residue remaining in a deposit account after satisfaction of all court-directed claims or payment of departmental expenditures approved by the Department of Finance for that account shall be transferred no later than July 1 of each fiscal year to the General Fund.~~

## **Proposition 64 – TBL**

The TBL was written to create a special fund in which the portion of penalties that are payable to the State General Fund or to the State Treasurer recovered by the Attorney General from an action or settlement pursuant to this Proposition can be deposited. This will allow for proper accounting of the settlements collected. The proposition failed to set up a special fund for this purpose and had settlements being deposited directly to the General Fund and the State Treasurer allowing for no tracking of the proposition collections.

Listed below is the proposed TBL being considered by the Department of Finance.

Section 1. Section 17206 of the Business and Professions Code is amended to read:

### **17206. Civil Penalty for Violation of Chapter**

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city, or city and county, having a population in excess of 750,000, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was

entered. Except as provided in subdivision (d), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

**(d) The Unfair Competition Law Fund is hereby created as a special account within the general fund in the State Treasury. The portion of penalties that is payable to the State General Fund or to the State Treasurer recovered by the Attorney General from an action or settlement of a claim made by the Attorney General pursuant to this chapter or to Part 3, Chapter 1 shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support investigations and prosecutions of California's consumer protection laws, including implementation of judgments obtained from such prosecutions or investigations and other activities which are in furtherance of this chapter or of Part 3, Chapter 1.**

~~—(d) The Unfair Competition Law Fund is hereby created in the State Treasury. Amounts recovered by the Attorney General from an action or settlement of a claim made by the Attorney General pursuant to this chapter shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support the ongoing investigation and prosecution of California's unfair competition and consumer protection laws in furtherance of this chapter.~~

~~(d)~~ (e) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action. Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the state Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the state Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

~~(e)~~(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.